

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PATRICK HYDE)	
Claimant)	
VS.)	
)	Docket Nos. 173,376
ALLEN VAN AND STORAGE)	& 184,959
Respondent)	
AND)	
)	
UNITED STATES FIDELITY AND GUARANTY CO.)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

The claimant, respondent, and Workers Compensation Fund all appeal from the Award entered by Administrative Law Judge Robert H. Foerschler on March 26, 1996. The Appeals Board heard oral on argument August 20, 1996.

APPEARANCES

Samuel J. Wells of Kansas City, Kansas, appeared on behalf of the claimant. Patricia A. Wohlford of Overland Park, Kansas, appeared on behalf of the respondent. Scott J. Logan of Prairie Village, Kansas, appeared on behalf of the Kansas Workers Compensation Fund.

RECORD AND STIPULATIONS

The Appeals Board has reviewed and considered the record listed in the Award. The Appeals Board has also adopted the stipulations listed in the Award.

ISSUES

Claimant has asked for review of the following issues:

- (1) Nature and extent of claimant's disability.
- (2) Whether claimant is entitled to reimbursements for mileage to include expense incurred while obtaining medical treatment.

Respondent and the Workers Compensation Fund asked for review of the finding of the Administrative Law Judge relating to credit for what the respondent and Fund described as a seven-week overpayment of temporary total disability benefits.

Claimant's counsel listed additional issues in his brief. These included future medical expenses, unauthorized medical expense, and Fund liability. The amount of Fund liability was stipulated. The Award included \$350 for unauthorized medical expense, the only unauthorized medical expense incurred. The Award also provided for future medical expenses upon application and approval. These issues were not addressed in claimant's brief and the Appeals Board affirms and adopts the Award by the Administrative Law Judge on those issues.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and after considering the arguments submitted by the parties, the Appeals Board concludes that the Award by the Administrative Law Judge for 17.5 percent disability should be affirmed.

Claimant injured his low back on May 30, 1992 while lifting in the course of his employment. At the time, his job duties included driving as well as loading and unloading trucks and moving household goods and office furniture. Claimant received treatment by Dr. Roger W. Hood. Dr. Hood diagnosed herniated disks at L3-4 and L4-5 but did not recommend surgery. After a period of conservative treatment, claimant underwent a vocational rehabilitation program and was retrained to work as an electrician.

The parties stipulated that the claimant sustained a functional impairment of 17.5 percent. The Administrative Law Judge awarded benefits on the basis of that 17.5 percent, finding that claimant had not proven a higher work disability. The Appeals Board agrees with this finding.

At the time of this injury, the permanent partial general disability was measured in accordance with K.S.A. 1991 Supp. 44-510e as follows:

"The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the ability of the employee to perform work in the open labor market and to earn comparable wages has been reduced, taking into consideration the employee's education, training, experience and capacity for rehabilitation, except that in any event the extent of permanent partial general disability shall not be less than [the] percentage of functional impairment."

The Appeals Board finds that due to the vocational rehabilitation program claimant's wage loss is 0 percent. The vocational experts indicate that claimant had the ability to earn a comparable wage as an electrician. The Appeals Board also agrees with and affirms the finding that claimant could, following his injury, work in the medium category as testified by the treating physician, Dr. Hood. As a result, his loss of ability to obtain employment in the open labor market was reduced by approximately 10 percent. This finding is based upon the opinions of Mr. Michael Dreiling and Ms. Karen Terrill. By giving equal weight to those two factors, as authorized in Hughes v. Inland Container Corp., 247 Kan. 407, 799 P.2d 1011 (1990), the work disability would be less than the 17.5 percent functional impairment. The Appeals Board therefore finds claimant's disability to be 17.5 percent.

Claimant asserts that he is entitled to mileage expense, per diem expense, and some additional reimbursement for additional prescriptions. Respondent presented that the prescription expenses have already been reimbursed. The Appeals Board therefore makes those prescription expenses in the amount of \$41.38 part of this Award, a part of which has apparently been previously satisfied. With regard to the meal expense claimed, the record indicates that respondent previously paid more than the \$15.00 per day allotted for board and lodging. Accordingly, the claimant's request for additional meal expense is denied. Claimant is entitled to the medical mileage and respondent is ordered to pay medical mileage for 1,495 miles at 26 cents per mile.

Finally, the respondent contends it was not properly credited the amounts paid prior to the Award. Specifically, respondent says it was not properly credited the amount of certain weeks of temporary total disability benefits paid beyond what was originally ordered. Also, respondent points out that the Award does not expressly credit respondent the amounts claimant was advanced for permanent partial disability benefits.

The Administrative Law Judge found that the period of temporary total disability benefits at issue, those from March 16, 1994 to May 4, 1994, were paid during a period when the vocational rehabilitation plan was still in dispute. K.S.A. 44-510g authorizes the Administrative Law Judge to order temporary total disability benefits during that period and

the Appeals Board finds these benefits to have been appropriately ordered. Accordingly, they should, as the Administrative Law Judge determined, be deducted from the 415 weeks and not otherwise credited.

The advance of permanent partial disability benefits in the amount of \$1,500 should, as the respondent suggests, be considered as payments previously made and credited toward the amount of permanent disability benefits owed under the Award.

The Appeals Board therefore adopts and approves the Award by the Administrative Law Judge with the single exception being the award of medical mileage in addition to the benefits previously ordered by the Administrative Law Judge.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Robert H. Foerschler dated March 26, 1996 should be, and is hereby, modified.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Patrick Hyde, and against the respondent, Allen Van and Storage, and its insurance carrier, United States Fidelity and Guaranty Company, for an accidental injury which occurred May 30, 1992 and based upon an average weekly wage of \$618.15 for 91.3 weeks of temporary total disability compensation at the rate of \$289.00 per week or \$26,385.70, followed by 323.70 weeks at the rate of \$72.12 per week or \$23,345.24, for a 17.5% permanent partial general body disability, making a total award of \$49,730.94.

As of December 31, 1996 there is due and owing claimant 91.3 weeks of temporary total disability compensation at the rate of \$289.00 per week or \$26,385.70, followed by 148.13 weeks of permanent partial compensation at the rate of \$72.12 per week in the sum of \$10,683.14 for a total of \$37,068.84, which is ordered paid in one lump sum less any amounts previously paid, including the \$1,500.00 advanced on permanent partial disability benefits. The remaining balance of \$12,662.10 is to be paid for 175.57 weeks at the rate of \$72.12 per week, until fully paid or further order of the Director.

The Appeals Board approves and adopts the orders of the Administrative Law Judge relating to Fund liability, future medical expense, unauthorized medical expense, and court reporting expense.

Respondent is ordered to pay claimant 26 cents per mile for 1,495 miles.

IT IS SO ORDERED.

Dated this ____ day of December 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Samuel J. Wells, Kansas City, KS
Patricia A. Wohlford, Overland Park, KS
Scott J. Logan, Prairie Village, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director